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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,498	03/29/2004	Gerald Duhamel	14296-28US CMB/clb	8902
31831 7590 03/21/2008 LABTRONIX CONCEPT INC. C/O OGILVY RENAULT 1981 MC GILL COLLEGE AVENUE SUITE 1600 MONTREAL, QUEBEC, H3A 2Y3 CANADA			EXAMINER LEE, BENJAMIN WILLIAM	
			ART UNIT 3714	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/811,498	<b>Applicant(s)</b> DUHAMEL ET AL.	
	<b>Examiner</b> Benjamin W. Lee	<b>Art Unit</b> 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. The amendment filed on 12/18/2007 has been entered. Claims 1-19 are pending in this application. Claims 20 and 21 have been cancelled.

#### ***Claim Objections***

2. Claim 19 is objected to because of the following informalities: “adapte” in line 2 should --that--. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Englman (US 2003/0157978) in view of Bennett (US 6,056,642)..

Re claim 1: Englman discloses a method of operating a game comprising the steps of displaying a line game/slot game (see Fig. 1; ¶ [0024], lines 5-6) and operating a meter displayed as different statuses of an evolving symbol (see Figs. 8-10; ¶ [0039]; ¶ [0040]) and triggering a feature based on at least one of the statuses. The PLANT symbol 77 enhances (e.g. doubles) a winning combination (see ¶ [0040]).

However, Englman fails to disclose at least three different statuses of an evolving symbol.

Bennett teaches color changing symbols. The symbols feature at least three different colors/statuses (e.g. red, white, and blue, see abstract). At least one of the statuses (red 7's) triggers a feature (a jackpot, see abstract).

Therefore, in view of Bennett, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add additional symbol statuses to the method and system of Englman in order to alter the payout and jackpot rates.

Re claim 2: The teachings of Englman as modified by Bennett as applied to claim 1 have been discussed above. Englman further discloses the meter is used to gather occurrences of a predetermined combination of symbols (see ¶ [0039]).

Re claim 3: The teachings of Englman as modified by Bennett as applied to claim 2 have been discussed above. Englman further discloses the event dependent of the game outcome is a winning outcome (see ¶ [0039]).

Re claim 5: The teachings of Englman as modified by Bennett as applied to claim 1 have been discussed above. Englman further discloses the evolving symbol occurs on a reel (see Figs. 8-10; ¶ [0040]), each occurrence of the evolving symbol comprising an Evolving Symbol Unit (ESU).

Re claim 8: The teachings of Englman as modified by Bennett as applied to claim 5 have been discussed above. Englman further discloses only a portion of the ESUs evolve upon occurrence of an evolution trigger (see Figs. 8-10; ¶ [0040]).

Re claim 9: The teachings of Englman as modified by Bennett as applied to claim 8 have been discussed above. Englman further discloses the evolution trigger occurs when the meter reaches a predetermined threshold (see ¶ [0039]; ¶ [0040]).

Re claim 15: The teachings of Englman as modified by Bennett as applied to claim 1 have been discussed above. Englman further discloses the feature triggered in the game by the evolving symbol is a change is a bonus payout. The enhanced PLANT symbol is used to a multiplier for a winning combination along the same pay line (see ¶ [0040]).

Re claim 17: The teachings of Englman as modified by Bennett as applied to claim 15 have been discussed above. Englman further discloses the evolving symbol occurs on a reel (see Figs. 8-10; ¶ [0040]), each occurrence of the evolving symbol comprising an Evolving Symbol Unit (ESU) and wherein at least one of the ESUs evolve upon occurrence of an evolution trigger (see Figs. 8-10; ¶ [0040]).

Re claim 18: Englman discloses a meter/system memory 22 for gathering occurrences of a predetermined event (see ¶ [0027]), a game apparatus comprising a display controller for displaying the meter as different statuses of an evolving symbol, according at least in part to a value of the meter (see Figs. 1 and 2; ¶ [0026]), an evaluation means for triggering a feature in a line game (see ¶ [0027]; ¶ [0039]), and an evaluation means triggering a feature in a line game based on at least one of the statuses (see ¶ [0039]).

However, Englman fails to disclose at least three different statuses of an evolving symbol.

Bennett teaches color changing symbols. The symbols feature at least three different colors/statuses (e.g. red, white, and blue, see abstract). At least one of the statuses (red 7's) triggers a feature (a jackpot, see abstract).

Therefore, in view of Bennett, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add additional symbol statuses to the method and system of Englman in order to alter the payout and jackpot rates.

Re claim 19: The teachings of Englman as modified by Bennett as applied to claim 1 have been discussed above. Englman further discloses the method is performed by a computer program embodied on a computer-readable storage medium having codes/software (see Fig.2; ¶ [0026]; ¶ [0027]).

7. Claims 4 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Englman as modified by Bennett as applied to claim 2 above, and further in view of Singer et al. (US 6,604,740 B1, hereinafter Singer).

The teachings of Englman as modified by Bennett as applied to claims 2 and 15 have been discussed above.

However, the teachings of Englman as modified by Bennett fail to disclose the event independent of the game outcome is at least one of a spin, an elapsed length of time, and a bet value.

Singer discloses a slot machine game having selectable wild symbols. A set of symbols is changed (i.e. triggered to evolve) to wild symbols based on a spin (there are three selectable spin buttons that designate which set of symbols to use as wild symbols, see abstract; Fig. 4).

Therefore, in view of Singer, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the event independent of the game outcome a spin in order to allow the special (evolving) symbols used in the game to change between games.

8. Claims 6, 7, and 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Englman as modified by Bennett as applied to claims 5 and 8 above, and further in view of Kaminkow (US 6,780,109 B2).

Re claim 6: The teachings of Englman as modified by Bennett as applied to claim 5 have been discussed above. The applicant has submitted that Englman teaches all ESUs evolve upon occurrence of an evolution trigger (see pages 12-13 of applicant's remarks filed 05/17/2007).

Re claim 7: The teachings of Englman as modified by Bennett as applied to claim 6 have been discussed above. Englman further discloses the evolution trigger occurs when the meter reaches a predetermined threshold (see ¶ [0039]; ¶ [0040]).

Re claim 10: The teachings of Englman as modified by Bennett as applied to claim 8 have been discussed above.

However, Englman fails to disclose or fairly suggest the number of evolving ESUs is randomly selected.

Kaminkow teaches the number of transformable wild symbols that change states is randomly selected (see col. 10, lines 17-28).

Therefore, in view of Kaminkow, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the game of Englman to evolve a random number of ESUs in order to provide another source of unpredictability and chance to the game and thus increase a player's interest in the game.

Re claim 11: The teachings of Englman as modified by Bennett as applied to claim 8 have been discussed above.

However, Englman fails to disclose or fairly suggest the evolving ESUs are randomly selected.

Kaminkow teaches the transformable wild symbols are randomly selected for changing states (see col. 9, line 66 - col. 10, line 9).

Therefore, in view of Kaminkow, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the game of Englman to randomly select ESUs for evolution in order to provide another source of unpredictability and chance to the game and thus increase a player's interest in the game.

Re claim 12: The teachings of Englman as modified by Bennett as applied to claim 8 have been discussed above.

However, Englman fails to disclose or fairly suggest the evolving ESUs are those displayed when the evolution trigger occurs.

Kaminkow teaches an activator symbol that may activate displayed transformable wild symbols (see col. 10, lines 17-28).

Therefore, in view of Kaminkow, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the game of Englman to evolve displayed ESUs when the evolution trigger occurs in order to prevent the probability of a player winning the game from growing to large.

Re claim 13: The teachings of Englman as modified by Bennett as applied to claim 5 have been discussed above. The applicant has submitted that Englman teaches all ESUs evolve at the same rate (see pages 12-13 of applicant's remarks filed 05/17/2007).

Re claim 14: The teachings of Englman as modified by Bennett as applied to claim 5 have been discussed above.

However, Englman fails to disclose or fairly suggest each evolving ESU evolves independently.

Kaminkow teaches the transformable wild symbols are randomly selected for changing states (see col. 9, line 66 - col. 10, line 9). Each random determination of the transformable wild symbol is carried out independently.

Therefore, in view of Kaminkow, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the game of Englman to have all the ESUs evolve independently in order to increase the complexity of game and make the game more interesting to the player.

### ***Response to Arguments***

9. Applicant's arguments filed 12/18/2007 have been fully considered but they are not persuasive.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on

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obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Englman teaches a slot machine game with an evolving symbol with two states. Bennett teaches a slot machine game with "7" symbols with three states (i.e. three different colors). The "7" symbols may yield different payouts based on their colors in a winning combination (see col. 3, lines 44-47). Thus, Bennett teaches that the "7" symbols have an "evolving" relationship between their three different states. As recited in the rejection of the claims, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the three symbol states of Bennett with the symbol evolution of Englman in order to provide more or less bonus modifications or awards. Adding more bonuses makes a slot machine more attractive to players (see Bennett, col. 3, lines 63-65). Such a modification would have been obvious to the designer of slot machine game and would produce predictable results.

The examiner also respectfully disagrees that the combination of the references would cause the prior art inventions to lose their purpose or change their principles of operation. Both references are directed towards slot machine games with symbols that change or transform. The combination or replacement of slot machine features would have been obvious to one of ordinary skill in the art.

Regarding the applicant's discussion of "meter" or "counter" (p. 6-7 of applicant's "Remarks"), the examiner respectfully disagrees. The applicant is correct in pointing out that the words "meter" or "counter" is described in Englman with regard to the evolving symbol. Using the applicant's analogy of Englman to a light switch, the examiner believes that a light switch may still be broadly considered a "meter." A light switch in an "on" state would have to indicate that there was a least one occurrence of altering the state of the switch from "off" to "on" (assuming the switch defaults in an "off" state). Further, the only purpose of the meter in the applicant's invention is to keep track of the current state of the evolving symbols (the meters are "displayed as at least three different statuses of an evolving symbol"). Englman keeps track of the state of the evolving symbol, even though there are only two states. When combined with Bennett, it would have been obvious to one of ordinary skill in the art keep track additional symbol states.

Regarding the applicant's argument that Bennett doesn't teach that the gathered occurrences may have any effect on the changes of a color being displayed rather than another (they don't "evolve" one from the other), the examiner respectfully disagrees. First, the feature of gathered occurrences affecting of a symbol affecting the symbol progression are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations

from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The only claim limitation that *might* support this feature *implicitly* is that the symbols are required to “evolve.” Dictionary.com defines “evolve” as “to develop gradually.” There is nothing that indicates, from the definition of “evolve”, that a particular sequence of evolution must be followed. The different colors of “7” symbols in Bennett may be considered an evolution since they gradually develop (they are all based on a “7” symbol and change states). Further, Englman directly teaches symbol evolution, in which the evolved symbol increases its benefit as compared to its previous state. The “evolved” plant symbol provides a bonus to the player.

The examiner respectfully disagrees with the applicant’s arguments on p. 8 regarding the combination of Englman with Bennett. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, Englman teaches a slot machine game with an evolving symbol with two states and Bennett teaches a slot machine game with “7” symbols with three states (i.e. three different colors). It would have been obvious to one of ordinary skill in the art to modify the evolving symbol of Englman to have the additional symbol states of Bennett. Additional symbol states provide more combinations. The extra symbol states would thus provide the designer of a slot machine games with more ways to alter the probability of the game to make it more attractive to players.

***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin W. Lee whose telephone number is 571-270-1346. The examiner can normally be reached on Mon - Fri (8:30 - 5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on 571-272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/B. W. L./  
Examiner, Art Unit 3714

/Ronald Laneau/  
Supervisory Patent Examiner, Art Unit 3714  
03/14/08